

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

COMPLAINT NO. R2-2002-0078

**MANDATORY PENALTY
IN THE MATTER OF
NAPA SANITATION DISTRICT
NAPA COUNTY**

This complaint to assess mandatory minimum penalties pursuant to Water Code Sections 13385 (h) and (i), is issued to the Napa Sanitation District, Napa County, (hereafter Discharger) based on a finding of violations of Waste Discharge Requirements Order No. 94-037 and Order No. 00-059 (NPDES No. CA0037575).

The Executive Officer finds the following:

1. On March 16, 1994, the Regional Water Quality Control Board, San Francisco Bay Region, (Regional Board) adopted Waste Discharge Requirements Order No. 94-037, for the Discharger, to regulate discharges of waste from its treatment plant. On July 19, 2000, Order No. 94-037 was superceded by Order No. 00-059. Elements of Order No. 00-059 were stayed by court order on September 6, 2001. Violations of those stayed limits are not addressed in this complaint.
2. Water Code Section 13385(h)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for the first serious violation in any six-month period or in lieu of the penalty require the discharger to spend an equal amount for a supplemental environmental project (SEP).
3. Water Code Section 13385(h)(2) defines a serious violation as any waste discharge of a Group I pollutant that exceeds the effluent limitation by 40 percent or more, or any waste discharge of a Group II pollutant that exceeds the effluent limitation by 20 percent or more.
4. Water Code Section 13385(i) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation, excepting the first three violations, for any of the following occurrences four or more times in any six-month period:
 - a. Exceeding a waste discharge requirement effluent limitation.
 - b. Failure to file a report pursuant to Section 13260.
 - c. Filing an incomplete report pursuant to Section 13260.
 - d. Exceeding a toxicity discharge limitation where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

5. Water Code Sections 13385(l) authorizes the Regional Board to allow the discharger to undertake a Supplemental Environmental Project (SEP) for up to the full amount of the penalty for liabilities less than or equal to \$15,000. For liabilities in excess of \$15,000, Water Code Sections 13385(l) permits SEPs of up to \$15,000 plus half the penalty amount that exceeds \$15,000
6. Order No. 94-037 and Order No. 00-059 include the following effluent limitations:

B. Effluent Limitations

1. *E. Residual Chlorine Instantaneous Maximum shall not exceed 0.0 mg/L.*
3. *Total Coliform Bacteria:*
 - a. *The moving median value for the Most Probable Number (MPN) of total coliform bacteria in any seven consecutive samples shall not exceed 2.2 MPN/100 mL; and*
 - b. *Any single sample shall not exceed 240 MPN/100 mL.*
5. *Acute Toxicity: (90th percentile) A bioassay test showing survival of less than 70 percent represents a violation of this effluent limit if one or more of the past ten bioassay tests show less than 70 percent survival.*
7. According to monitoring reports received, there were a total of 56 effluent limit violations of your NPDES permit during the period between January 1, 2000 and February 28, 2002. The violations, the applicable permit and the appropriate effluent limitations are listed in Table 1. Prior to July 19, 2000 Order No. 94-037 was in force, on and after which Order No. 00-059 was in force. On September 6, 2001, a court order stayed certain effluent limits of Order No. 00-059. Those effluent limits are still under litigation and are not addressed in this complaint. The effluent limitations listed in Table 1 are the ones being enforced, with the applicable permit being listed in the adjacent column.
8. There were four acute toxicity 11-sample 90th percentile effluent limit violations on February 6, 2000, and February 10, October 1, and November 18, 2001. The two violations occurring in February, 2000 and February 2001 are not subject to mandatory minimum penalties since there have not been four or more violations in the respective preceding 180 days. The two violations occurring on October 1, and November 18, 2001 are subject to mandatory minimum penalties since there have been four or more violations in the respective preceding 180 days. Both of these violations are subject to a \$3,000 mandatory minimum penalty under Section 13385(i). The total mandatory penalty for the acute toxicity 11-sample 90th percentile effluent limit violations is \$6,000.
9. There were two chlorine residual instantaneous maximum effluent limit violations on December 21, 2000 and September 24, 2001. The chlorine residual violations

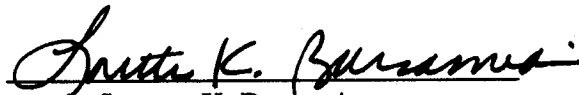
are serious violations because chlorine is a Group II pollutant and any detection exceeds the zero effluent limitation by more than 20%. These serious violations are each subject to a mandatory minimum penalty of \$3,000. The total mandatory penalty for the two chlorine residual instantaneous maximum effluent limit violations is \$6,000.

10. There were thirty-five total coliform seven sample moving median violations during the period between January 1, 2000 and February 28, 2002. The violations occurring on September 16 and 17, 2001, are not subject to mandatory minimum penalties since there have not been four or more violations in the respective preceding 180 days. The thirty three total coliform seven sample moving median violations occurring on September 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and October 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 15, 16, 17, 22, 23, 24, 25, 29, 31, 2001, are subject to mandatory minimum penalties since there have been four or more violations in the respective preceding 180 days. Each violation is subject to a \$3,000 mandatory penalty under Section 13385(i). The total mandatory penalty for the thirty-three total coliform seven sample moving median violations is \$99,000.
11. The total coliform daily maximum violation occurring on September 17 is not subject to mandatory minimum penalty since there have not been four or more violations in the preceding 180 days. The fourteen total coliform daily maximum violations occurring on September 24, 27, 28 and 29, October 3, 5, 6, 7, 8, 10, 12, 15, 16 and 23, 2001, are subject to mandatory minimum penalties since there have been four or more violations in the respective preceding 180 days. Each violation is subject to a \$3,000 mandatory penalty under Section 13385(i). The total mandatory penalty for the fourteen total coliform seven sample moving median violations is \$42,000.
12. Fifty-one of the fifty-six violations in findings 7 through 11 are subject to mandatory minimum penalties, for a total fine of \$ 153,000. In lieu of the first \$15,000 of the penalty the discharger may be permitted to conduct an SEP approved by the Executive Officer. Of the penalty amount in excess of \$15,000 the discharger may be permitted to contribute 50% towards an approved SEP.

NAPA SANITATION DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed a minimum mandatory penalty in the amount of \$153,000.
2. The Regional Board shall hold a hearing on this Complaint on February 19, 2003, unless the Discharger waives the right to a hearing by signing the last page of this Complaint and checking the appropriate box, and there is no significant public comment. By doing so, the Discharger agrees to:

- a) Pay the full penalty of \$153,000 within 30 days after the signed waiver becomes effective as indicated in item 4 below, or
 - b) Complete an SEP in an amount equivalent to a maximum of \$84,000. Pay a penalty of the balance to within 30 days after the signed waiver becomes effective. The sum of the SEP amount, and the amount of the fine to be paid to the State Water Pollution Cleanup and Abatement Account shall equal the full penalty amount of \$153,000.
3. If the Discharger chooses to propose an SEP, it must submit a proposal by February 3, 2003 for the Executive Officer's approval. Any SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002. If the proposed SEP is not acceptable to the Executive Officer, the Discharger has 30 days from receipt of notice of an unacceptable SEP to either submit a new or revised proposal, or make a payment for the suspended amount. All payment, including any money not expended for the SEP must be made payable to the State Water Pollution Cleanup and Abatement Account. Regular reports on the SEP implementation shall be provided to the Executive Officer according to a schedule to be determined. The completion report for the SEP shall be submitted to the Executive Officer within 60 days of project completion.
 4. The signed waiver becomes effective upon closure of the public comment period for this Complaint, provided no significant public comment is received by Board staff by the due date indicated in the appropriate public notice.
 5. If a hearing is held, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for recovery of the administrative civil liability.


Loretta K. Barsamian
Executive Officer

12.20.02

Date

ATTACHMENT

Table 1: Napa Sanitation District's Effluent Violations
(January 2000 - March 2002)

Parameters	Order No. 94-037 Or Order No. 00-059 Limit (Current Order)	Applicable limit	Date of Violation	Start of 180 days (Chronic)	Reported Value (See Note 5)	Minimum Mandatory Penalty	Violation?
1 Acute Toxicity	11-sample 90th >70%	Previous Order	6-Feb-00	24-Jun-00	25%		C1
2 Chlorine residual	int. max 0.0 mg/L	Current Order	21-Dec-00	14-Aug-00	1.03 mg/L for 30 min	\$3,000	S C1
3 Acute Toxicity	11-sample 90th >70%	Current Order	10-Feb-01	20-Mar-01	25%		C2
4 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	16-Sep-01	21-Mar-01	13		C1
5 Total Coliform daily max	Max 240	Current Order	17-Sep-01	21-Mar-01	350		C2
6 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	17-Sep-01	21-Mar-01	13	\$3,000	C3
7 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	18-Sep-01	22-Mar-01	17	\$3,000	C
8 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	19-Sep-01	23-Mar-01	110	\$3,000	C
9 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	20-Sep-01	24-Mar-01	130	\$3,000	C
10 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	21-Sep-01	25-Mar-01	170	\$3,000	C
11 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	22-Sep-01	26-Mar-01	170	\$3,000	C
12 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	23-Sep-01	27-Mar-01	170	\$3,000	C
13 Chlorine residual	Inst. Max 0 mg/L	Current Order	24-Sep-01	28-Mar-01	3.7 mg/L for 14 min	\$3,000	S
14 Total Coliform daily max	Max 240	Current Order	24-Sep-01	28-Mar-01	>2400	\$3,000	C
15 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	24-Sep-01	28-Mar-01	170	\$3,000	C
16 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	25-Sep-01	29-Mar-01	170	\$3,000	C
17 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	26-Sep-01	30-Mar-01	130	\$3,000	C
18 Total Coliform daily max	Max 240	Current Order	27-Sep-01	31-Mar-01	280	\$3,000	C
19 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	27-Sep-01	31-Mar-01	170	\$3,000	C
20 Total Coliform daily max	Max 240	Current Order	28-Sep-01	01-Apr-01	920	\$3,000	C
21 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	28-Sep-01	01-Apr-01	240	\$3,000	C
22 Total Coliform daily max	Max 240	Current Order	29-Sep-01	02-Apr-01	>2400	\$3,000	C
23 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	29-Sep-01	02-Apr-01	280	\$3,000	C
24 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	30-Sep-01	03-Apr-01	280	\$3,000	C
25 Acute Toxicity	11-sample 90th >70%	Current Order	01-Oct-01	04-Apr-01	55	\$3,000	C
26 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	01-Oct-01	04-Apr-01	240	\$3,000	C
27 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	02-Oct-01	05-Apr-01	130	\$3,000	C
28 Total Coliform daily max	Max 240	Current Order	03-Oct-01	06-Apr-01	540	\$3,000	C
29 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	03-Oct-01	06-Apr-01	280	\$3,000	C
30 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	04-Oct-01	07-Apr-01	220	\$3,000	C
31 Total Coliform daily max	Max 240	Current Order	05-Oct-01	08-Apr-01	>1600	\$3,000	C
32 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	05-Oct-01	08-Apr-01	220	\$3,000	C
33 Total Coliform daily max	Max 240	Current Order	06-Oct-01	09-Apr-01	920	\$3,000	C
34 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	06-Oct-01	09-Apr-01	220	\$3,000	C
35 Total Coliform daily max	Max 240	Current Order	07-Oct-01	10-Apr-01	>1600	\$3,000	C
36 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	07-Oct-01	10-Apr-01	540	\$3,000	C
37 Total Coliform daily max	Max 240	Current Order	08-Oct-01	11-Apr-01	>1600	\$3,000	C
38 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	08-Oct-01	11-Apr-01	920	\$3,000	C
39 Total Coliform daily max	Max 240	Current Order	10-Oct-01	13-Apr-01	1600	\$3,000	C
40 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	10-Oct-01	13-Apr-01	1600	\$3,000	C
41 Total Coliform 7-Sample-max	7-sample median 2.2	Current Order	11-Oct-01	14-Apr-01	1600	\$3,000	C

ATTACHMENT

Table 1: Napa Sanitation District's Effluent Violations
(January 2000 - March 2002)

Parameters	Order No. 94-037 Or Order No. 00-059 Limit (Current Order)	Applicable limit	Date of Violation	Start of 180 days (Chronic)	Reported Value (See Note 5)	Minimum Mandatory Penalty	Violation?
42 Total Coliform daily max	Max 240	Current Order	12-Oct-01	15-Apr-01	350	\$3,000	C
43 Total Coliform 7-Sample-median	7-sample median 2.2	Current Order	12-Oct-01	15-Apr-01	1600	\$3,000	C
44 Total Coliform daily max	Max 240	Current Order	15-Oct-01	18-Apr-01	920	\$3,000	C
45 Total Coliform 7-Sample-median	7-sample median 2.2	Current Order	15-Oct-01	18-Apr-01	920	\$3,000	C
46 Total Coliform daily max	Max 240	Current Order	16-Oct-01	19-Apr-01	350	\$3,000	C
47 Total Coliform 7-Sample-median	7-sample median 2.2	Current Order	16-Oct-01	19-Apr-01	920	\$3,000	C
48 Total Coliform 7-Sample-median	7-sample median 2.2	Current Order	17-Oct-01	20-Apr-01	350	\$3,000	C
49 Total Coliform 7-Sample-median	7-sample median 2.2	Current Order	22-Oct-01	25-Apr-01	350	\$3,000	C
50 Total Coliform daily max	Max 240	Current Order	23-Oct-01	26-Apr-01	920	\$3,000	C
51 Total Coliform 7-Sample-median	7-sample median 2.2	Current Order	24-Oct-01	26-Apr-01	350	\$3,000	C
52 Total Coliform 7-Sample-median	7-sample median 2.2	Current Order	24-Oct-01	27-Apr-01	350	\$3,000	C
53 Total Coliform 7-Sample-median	7-sample median 2.2	Current Order	25-Oct-01	28-Apr-01	130	\$3,000	C
54 Total Coliform 7-Sample-median	7-sample median 2.2	Current Order	29-Oct-01	02-May-01	79	\$3,000	C
55 Total Coliform 7-Sample-median	7-sample median 2.2	Current Order	31-Oct-01	04-May-01	46	\$3,000	C
56 Acute Toxicity	11-sample 90th >70%	Current Order	18-Nov-01	22-May-01	40	\$3,000	C
Total Penalty					\$153,000		

- Note:** 1. Current permit was adopted on July 19, 2000.
2. The stay of current permit effluent limitations was made on September 6, 2001.
3. Current permit limits in stay include: 85% removal BOD and TSS, mass trigger and limit, and priority pollutants limits.
4. The violations are ordered by the date of occurrence.
5. Reported value is 11-sample 90th percentile or 7-Sample median value where appropriate.
- C1, C2, C3 - Chronic violation not subject to mandatory minimum penalty, the first through third in a 6 month period.
C - Chronic violation subject to mandatory minimum penalty, the fourth and subsequent in a 6 month period.
S - Serious violation, subject to mandatory minimum penalty.

WAIVER

(The signed waiver becomes effective upon closure of the public comment period for this Complaint, provided no significant public comment is received by Board staff by the due date indicated in the appropriate public notice.)

[] Waiver of the right to a hearing and agreement to make payment in full

By checking the box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. R2-2002-0078 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o State Water Resources Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the signed waiver becomes effective as indicated above. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of the civil liability proposed in this Complaint.

[] Waiver of the right to a hearing and agreement to propose and complete an SEP

By checking the box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. R2-2002-0078, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability of up to \$84,000. I also agree to remit the balance of the fine to the State Water Pollution Cleanup and Abatement Account within thirty (30) days after the signed waiver becomes effective. The sum of the SEP amount and the amount of the fine to be paid shall equal the full penalty amount of \$153,000. I understand that the SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002, and be subject to approval by the Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Executive Officer, I agree to pay the suspended penalty amount within 30 days of a letter from the Executive Officer denying the approval of the proposed SEP. I also understand that I am giving up my right to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil proposed in this Complaint. I further agree to complete the approved SEP within a time schedule set by the Executive Officer.

Name (print)

Signature

Date

Title/Organization